



SOUTHWESTERN

Electric Power Company

P. O. BOX 1106 - SHREVEPORT, LOUISIANA 71156

October 17, 1977

Date October 18, 1977

Fee \$ 50

IC Washington, D. C.

Interstate Commerce Commission
Washington, D. C. 20423

9042
RECORDATION NO. Filed & Recorded

OCT 18 1977 - 9 00 AM

INTERSTATE COMMERCE COMMISSION

Attention: Secretary

Dear Sir:

Enclosed herein for filing and recording, pursuant to Section 20c of the Interstate Commerce Act, are one original and 16 executed counterparts of the following:

1. Conditional Sale Agreement dated as of October 15, 1977 between Thrall Car Manufacturing Company and Southwestern Electric Power Company.
2. Agreement and Assignment dated as of October 15, 1977 between Thrall Car Manufacturing Company and the Mercantile-Safe Deposit and Trust Company, as Agent.

The foregoing documents relate to the purchase and financing of:

242 100-Ton Open-Top High-Side 60 foot Coal Gondola Cars with swivel couplers (AAR Mechanical Designation "HT") and bearing the road numbers set forth in Annex A hereto.

Enclosed is a check in the amount of \$50 in payment of the applicable recording fee.

Please return 14 counterparts of the Conditional Sale Agreement and the Agreement and Assignment, each bearing recordation dated with respect to the filing pursuant to Section 20c of said Act, to the bearer of this letter.

Richard W. Klemm

(D. W. Klemm)

Interstate Commerce Commission
October 17, 1977
Page 2

For your records, the names and addresses of the parties to the enclosed documents are as follows:

VENDOR: Thrall Car Manufacturing Company
P. O. Box 218
Chicago Heights, Illinois 60401
Attention: Vice President-Finance

PURCHASER: Southwestern Electric Power Company
428 Travis Street
P. O. Box 21106
Shreveport, Louisiana 71156
Attention: Treasurer

ASSIGNEE: Mercantile-Safe Deposit and Trust Company
P. O. Box 2258
Baltimore, Maryland 21203
Attention: Corporate Trust Department

Very truly yours,

Southwestern Electric Power Company



W. H. Snow - Vice President-Finance

10/18/77

Interstate Commerce Commission
Washington, D.C. 20423

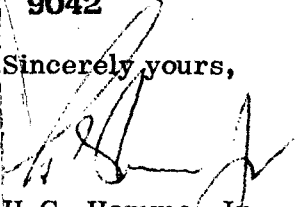
OFFICE OF THE SECRETARY

W.H.Snow,
Vice Pres.-Finance
Southwestern Electric Power Co.
P.O.Box 1106
Shreveport, Louisiana 71156

Dear **sir:**

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **10/18/77** at **9:00am**,
and assigned recordation number(s) **9042**

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

9042
RECORDATION NO. Filed & Recorded

EXECUTED COUNTERPART

OCT 18 1977-9 00 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of October 15, 1977,

between

THRALL CAR MANUFACTURING COMPANY

and

SOUTHWESTERN ELECTRIC POWER COMPANY

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of October 15, 1977, between THRALL CAR MANUFACTURING COMPANY, a Delaware corporation (hereinafter called the Builder or the Vendor as the context may require, all as more particularly set forth in Article 1 hereof), and SOUTHWESTERN ELECTRIC POWER COMPANY, a Delaware corporation (hereinafter called the Company).

WHEREAS, the Builder has agreed to construct, sell and deliver to the Company, and the Company has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. The parties hereto contemplate that this Agreement shall be assigned to Mercantile-Safe Deposit and Trust Company, acting as agent under a Finance Agreement dated as of the date hereof (said agent being hereinafter sometimes called the Agent and said Finance Agreement being hereinafter called the Finance Agreement). The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of

equipment described in Schedule B hereto (such units of equipment being hereinafter called the Equipment) at its plant set forth in said Schedule B and will sell and deliver to the Company, and the Company will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Company (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the Equipment to the Company at the place or places specified in Schedule B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in said Article 16), or any event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond its reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facil-

ities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered and accepted and for which settlement has not been made pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder and the Company shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Company shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Company shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Company shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Company and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder shall inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Company for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Company shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and are marked in accordance with Article 7 hereof; provided, however, that the

Builder shall not thereby be relieved of its warranty to which reference is made in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Company will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Company. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, plus off-line freight charges and sales tax, if any.

If the aggregate Purchase Price shall exceed \$8,400,000, the Builder (and any assignee thereof) and the Company, unless waived by the Company, will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Company (but fully preserving the Builder's security interest in such Equipment in a manner acceptable to the Builder), as will, after giving effect to such exclusion, reduce the aggregate Purchase Price under this Agreement to not more than \$8,400,000. The Company agrees to purchase any such unit or units so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or by means of a conditional sale, equipment trust or other appropriate method of financing as the Company shall determine and shall be reasonably acceptable to such Builder.

For the purpose of making settlement, the Equipment shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Company (each such group being hereinafter called a Group), as the Builder and the Company may agree to.

The Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$8,400,000 and any amount or amounts previously paid with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 40 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 40, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the fourth paragraph of this Article 4 shall be payable semiannually on May 1 and November 1 in each year, commencing on May 1, 1978, to and including November 1, 1997.

The unpaid portion of the Conditional Sale Indebtedness payable in instalments on May 1 and November 1, commencing on May 1, 1978, to and including November 1, 1983, shall bear interest from the Closing Date or the respective Closing Dates on which such indebtedness was incurred at the rate of 7.75% per annum; and the unpaid portion of the Conditional Sale Indebtedness payable in instalments on May 1 and November 1, commencing on May 1, 1984, to and including November 1, 1997, shall bear interest from the Closing Date or the respective Closing Dates on which such indebtedness was incurred at the rate of 8.20% per annum; subject, in each

case, to increase or decrease as provided elsewhere in this Article 4. All such interest shall be payable, to the extent accrued, on May 1 and November 1 in each year, commencing May 1, 1978.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after October 20, 1977, and prior to the date set forth in Item 3 of Schedule A hereto [hereinafter called the Cut-Off Date]), not more than 10 business days following presentation by the Builder to the Company of the invoice with respect to any Group of the Equipment and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Company by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed the sum of (i) the amount then on deposit with the Vendor pursuant to the Finance Agreement under which the Vendor is acting as agent for the institutional investors therein named and (ii) the amount, if any, to be paid by the Company pursuant to subparagraph (a) of the fourth paragraph of this Article 4. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, or New York, New York, are authorized or obligated to remain closed.

The parties hereto acknowledge that, pursuant to the Finance Agreement under which the Agent is acting as agent for certain institutional investors (hereinafter called Investors), each Investor is investing in one or more instalments of Conditional Sale Indebtedness as set forth in Schedule A thereto, and that if all the Investors do not deposit their investments with the Agent as provided in the Finance Agreement, the investments made will not be on deposit with the Agent on a pro rata basis on any Closing Date so as to permit the Conditional Sale Indebtedness to be paid to the Investors in accordance with the instalment maturities specified in said Schedule to the Finance Agreement. Accordingly, notwithstanding anything to the contrary contained herein, the Company agrees that, if for any reason all the Investors do not make their investments as provided in the Finance Agreement or if the instalment maturi-

ties specified in said Schedule to the Finance Agreement do not in all respects correspond to the instalment maturities herein contained, the Conditional Sale Indebtedness will be paid by the Company in such instalment or instalments as will correspond to the instalment maturities specified in said Schedule to the Finance Agreement opposite the names of the Investors who have made their investments in the Conditional Sale Indebtedness in such manner as to amortize their investments as provided in said Schedule, and an appropriate amendment to this Agreement will be executed and recorded reflecting such payment schedule. Interest payable on the Conditional Sale Indebtedness held by each Investor shall be at such rate or rates per annum as correspond to the rate or rates per annum specified opposite the name of such Investor in said Schedule on the aggregate unrepaid investment made by such Investor in the Conditional Sale Indebtedness from the Closing Date in respect of which such investment was made.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Company will pay, to the extent legally enforceable, interest at the rate of 9% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof (including amounts due and payable in accordance with the optional prepayment provisions set forth below), anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Company shall not have the privilege of prepaying any indebtedness hereunder scheduled to be paid prior to November 1, 1988, prior to the date it becomes due. With respect to Conditional Sale Indebtedness scheduled to be paid on and after November 1, 1988, prepayments may be made by the Company in accordance with Article 8 hereof, and, in addition, the Company may, at its election, on any November 1 or May 1 on and after November 1, 1988, prepay such Indebtedness, in whole or

in part, at a prepayment price (hereinafter called the Prepayment Price) equal to the percentage of the principal amount being prepaid set forth below:

<u>Prepayment Date</u>	<u>Percentage</u>	<u>Prepayment Date</u>	<u>Percentage</u>
November 1, 1988.....	104.00%	November 1, 1993 ...	101.78%
May 1, 1989	103.78	May 1, 1994	101.56
November 1, 1989 ...	103.56	November 1, 1994 ...	101.33
May 1, 1990	103.33	May 1, 1995	101.11
November 1, 1990 ...	103.11	November 1, 1995 ...	100.89
May 1, 1991	102.89	May 1, 1996	100.67
November 1, 1991 ...	102.67	November 1, 1996 ...	100.44
May 1, 1992	102.44	May 1, 1997	100.22
November 1, 1992 ...	102.22	November 1, 1997	
May 1, 1993	102.00	(final maturity) .	100.00

together, in the case of any such prepayment, with accrued interest to the date of prepayment (hereinafter called the Prepayment Date). Notice of such optional prepayment shall be given in a written instrument filed with the Vendor within 60 days but no less than 30 days prior to the Prepayment Date. Such notice shall be irrevocable and shall state the Prepayment Price and the amount of Conditional Sale Indebtedness to be prepaid on the Prepayment Date. Notice of prepayment having been given as aforesaid, the Conditional Sale Indebtedness to be so prepaid shall, on the Prepayment Date, become due and payable at the Prepayment Price and from and after such Date (unless the Company shall default in the payment of the Prepayment Price and accrued interest), the Conditional Sale Indebtedness specified in such notice shall cease to bear interest. If less than all the Conditional Sale Indebtedness outstanding hereunder is to be prepaid, the amount prepaid shall be applied to the aggregate amount of Conditional Sale Indebtedness outstanding in inverse order of the scheduled maturities of the instalments thereof.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Company, the assignee thereof may request the Company to make and the Company shall make such payments to it at such address as shall be supplied to the Company by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Company hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Company assumes and shall pay on demand. The Company will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Company shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Company shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been liable or potentially liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Company shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests in the Equipment until the Company shall have made all its payments under this Agreement and shall have kept and performed all

its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Company's obligations herein contained shall have been performed by the Company, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Company at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its title to and interests therein to the Company, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Company at its address referred to in Article 21 hereof, (b) execute and deliver to the Company at such address, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records such transfer and release and (c) pay to the Company any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Company hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Company.

ARTICLE 7. Marking of the Equipment. The Company will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex I to Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or the name of the Vendor followed by the words "Agent, Owner", or other appropriate markings approved by the Vendor, if any, as set forth in Item 4 of Schedule A hereto, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title and interests in the Equipment and its rights under this Agreement. The Company will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Company will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Company and filed, recorded and deposited by the Company in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the preceding paragraph, the Company will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Company may cause the Equipment to be lettered with the names or initials or other insignia of the Company or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise for a period to be in excess of 60 days or for an indefinite period which shall have continued for more than 60 days (such occurrences being hereinafter called Casualty Occurrences),

the Company shall fully inform the Vendor in regard thereto promptly after it has knowledge of such Casualty Occurrence. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$200,000, the Company shall, on the next date for the payment of principal or interest hereunder occurring 30 days or more after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Company setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

So long as no event of default shall have occurred under this Agreement and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Company shall direct in a written instrument filed with the Vendor within 30 days but no less than 10 days prior to the first scheduled maturity of Conditional Sale Indebtedness occurring 30 days or more after the Company has knowledge of the Casualty Occurrence, in whole or in part, to prepay instalments of Conditional Sale Indebtedness or, in whole or in part, toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment, locomotives or cabooses) first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer of the Company) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, the Company shall deliver to the Vendor a certificate of an operating officer of the Company certifying that the cost of such equipment to the Vendor does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate of 1/15 of such original cost for each year in service. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be so applied to reduce each instalment of Conditional Sale Indebtedness thereafter falling due pro rata.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that

amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Company shall have made any payment or payments under the provisions of subparagraph (a) of the fourth paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments theretofore made pursuant to this Article 8) as of the date immediately prior to the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments theretofore made pursuant to this Article 8) as of the date immediately prior to the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Vendor may, if requested by the Company so to do, waive payment by the Company of such aggregate Casualty Value, or any portion thereof; provided, however, that any such waiver shall apply only to the specific amount, if any, of aggregate Casualty Value for which the Vendor shall, in a written notice filed with the Company by the Vendor prior to the date when such amount shall have been payable, expressly waive payment; provided, further, that if the Vendor shall be the Agent or an agent for a group of institutional investors, such Vendor may not waive payment by the Company of any amount payable pursuant to this Article 8 unless each of the institutional investors holding interests in any of the Conditional Sale Indebtedness then outstanding shall authorize such waiver in writing prior to, but not more than 30 days before, the date such amount is payable by the Company.

The Company will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect

to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Company shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the title and interests of the Vendor in such replacement units. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Company shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Company shall file therewith in addition to any settlement documents which may be required pursuant to the fifth paragraph of Article 15 hereof:

(1) a certificate of an operating officer of the Company certifying that such replacement unit is standard gauge railroad equipment (other than passenger or work equipment, locomotives or cabooses) first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service, and that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(2) an opinion of counsel for the Company that security title to such replacement unit is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except the liens permitted by the second paragraph of Article 12 hereof and the rights of the Company under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings and recordings have been made to perfect the title and interests of the Vendor therein.

So long as no event of default shall have occurred under this Agreement and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Company shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or better by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total assets in excess of \$1,000,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called Investments). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Company may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and, so long as no event of default shall have occurred under this Agreement and be continuing, any excess shall be paid to the Company. If such proceeds (plus such interest) shall be less than such cost, the Company will promptly pay to the Vendor an amount equal to such deficiency. The Company will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Company in the Company's business or operations, such occurrence shall, upon the election of the Company evidenced by written notice to the Vendor, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Company shall direct any money paid to the Vendor in respect thereof to be applied only toward the cost of replacement equipment and not to prepay any instalment of Conditional Sale Indebtedness.

If one or more events of default under this Agreement shall have occurred and be continuing, all money held by

the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Company, after payment to the Vendor by the Company of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Company or the Company's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Company.

The Company will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance (or carry and maintain self-insurance through the establishment of adequate reserves) for the benefit of the Vendor in respect of the Equipment at the time subject hereto to the extent and against risks comparable to those insured (or self-insured) against by the Company on similar equipment owned by it or leased by it pursuant to a net or other lease under which the Company is responsible or liable for such risks.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Company will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Company will at all times comply in all respects with all laws of the jurisdictions in which its operations may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission, Securities and Exchange Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Company or the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Company will conform therewith, at its own expense; provided, however, that the Company may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the

opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the year 1978, the Company shall furnish to the Vendor an accurate statement signed by an operating officer of the Company (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence (including any Casualty Occurrence described in the eighth paragraph of Article 8) during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that the numbers and markings required by Articles 7 and 8 hereof have been preserved or, if necessary, replaced in accordance with said Article 7. The Vendor shall have the right, by its agents, to inspect the Equipment and the Company's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Company, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the units of Equipment and the use thereof upon any lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Company, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of such units of Equipment by the Builder of such units to the Company, but only upon and subject to all the terms and conditions of this Agreement; subject to such terms and conditions, the Company may also (i) furnish the units of Equipment or any thereof to railroad companies for use upon lines of railroad owned or operated by them or upon lines of railroad over which they have trackage or other operating rights, and connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and (ii) furnish the units of Equipment on the requisite portion thereof to other public utilities subject to the Federal Power Act or the Texas Public Utility Regulatory Act for use as a "unit train" for a period not to exceed six months; provided, however, that the Company shall not be entitled to assign or permit the assignment of any units of Equipment to service involving regular operation and maintenance outside of the United States of America.

ARTICLE 12. Prohibition Against Liens. The Company will pay or discharge any and all sums claimed by any party from, through or under the Company or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's title and interests therein; provided, however, that the Company shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. The Company shall promptly reimburse the Vendor for any amount paid by the Vendor in discharge of liens, charges or security interests upon the Equipment and any amounts so paid by the Vendor shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent or filed pursuant to law.

ARTICLE 13. Company's Indemnities. The Company will indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title and interests in the Equipment, the use and operation thereof by the Company during the period when said title and interests remain in the Vendor or the transfer of said title and interests in the Equipment by the Vendor pursuant to or as contemplated by any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Company and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Company and not developed or purported to be developed by the Builder, the Builder will indemnify, protect and hold harmless the Company from and against any and all liability, claims, costs, charges and expenses, including royalty payments

and counsel fees, in any manner imposed upon or accruing against the Company, its assigns or the users of the Equipment of the Builder because of the use in or about the construction or operation of any of such Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Company likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Company and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Company and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder will and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Company every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Company and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment of the Builder on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Company or the users of the Equipment all and every such further assurance as may be reasonably requested by the Company more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Company of any claim known to the Builder from which liability may be charged against the Company hereunder and the Company will give notice to the Builder of any claim known to the Company from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Builder's warranty of material and workmanship is set forth in Item 2 of Schedule A hereto.

ARTICLE 15. Assignments. The Company will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof or a public utility subject to the Federal Power Act or the Texas Public Utility Regulatory Act, which railroad company or public utility, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Company under this Agreement, shall not be deemed a breach of this covenant, provided that (i) such railroad company or public utility shall have net tangible assets and capital and surplus aggregating at least that of the Company immediately prior to such acquisition, (ii) such railroad company or public utility shall not, upon the effectiveness of such sale, assignment, transfer or disposition, be in default under this Agreement and (iii) the Company shall in all events and all cases remain responsible and liable for all its obligations and covenants under this Agreement, notwithstanding the assumption thereof by such railroad company or public utility.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Company of any of its obligations to the Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the

Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company of the notification of any such assignment, all payments thereafter to be made by the Company under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Company recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company against and only against the Builder.

The Company will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Company, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

In the event that on or prior to the Cut-Off Date

this Agreement (a) shall not have been assigned by the Builder to the Agent under the Finance Agreement, to an institutional investor or to an agent acting for a group of institutional investors under a finance agreement providing for deposit with the agent by the institutional investors of an amount equal to the Conditional Sale Indebtedness, by an instrument of assignment providing for payment to the Builder of an amount equal to the Conditional Sale Indebtedness, or (b) shall have been so assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, the Builder will promptly notify the Company of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment of the Builder for which the aggregate purchase price shall not have been received, but fully preserving the Builder's security interest in such equipment in the manner acceptable to the Builder, and the Company will, not later than 90 days after the date such payment was due and prior to the Cut-Off Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of Equipment, together with interest from the date such payment was due to the date of payment by the Company at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Company shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Company as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Company shall, for more than 15 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently

herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) (i) a voluntary petition in bankruptcy or for reorganization under the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by the Company or (ii) an involuntary petition in bankruptcy or for reorganization under the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed against the Company, unless such involuntary petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within 60 days after such petition shall have been filed; or

(d) (i) any other voluntary proceedings shall be commenced by the Company for any relief which includes, or might result in, any modification of the obligations of the Company hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions or (ii) an involuntary proceeding of the type referred to in clause (i) of this subparagraph (d) shall be commenced against the Company, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within 60 days after such proceeding shall have been commenced; or

(e) any representation or warranty made by the Company in this Agreement or the Finance Agreement or in any document or certificate furnished the Vendor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect and such condition shall continue unremedied for a period of 15 days after written notice thereof by the Vendor to the Company specifying the default and demanding that the same be remedied; or

(f) the Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Company and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable; provided, however, that if any default specified in subparagraph (e) above shall be such that it cannot be fully remedied within the 15-day period specified therein, no Declaration of Default shall be made with respect thereto by the Vendor so long as corrective action satisfactory to the Vendor is instituted by the Company within such period and is thereafter pursued in a manner satisfactory to the Vendor until such default is fully remedied. In the event of a Declaration of Default, the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company wherever situated. The Company shall promptly notify the Vendor of any event which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Company in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate

possession of the Equipment, or one or more of the units thereof, without liability to return to the Company any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Company or any other person and for such purpose may enter upon the Company's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company or to which the Company has access.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points for the delivery of the Equipment to the Vendor, the Company shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Company until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Company and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession

of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Company by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the next sentence of this paragraph, all the Company's rights in the Equipment shall thereupon terminate and all payments made by the Company may be retained by the Vendor as compensation for the use of the Equipment by the Company. If the Company or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Company, before the expiration of the 30-day period described in the preceding sentence of this paragraph, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Company and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company or any other party claiming from,

through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Company should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Company may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Company shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Company as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Company to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Company (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Company hereunder. From and after the

date of any such sale, the Company shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the Company's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Company shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Company at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Company shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company.

The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In

the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Company to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Company will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Company will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Company, at 428 Travis Street, P. O. Box 21106, Shreveport, Louisiana 71156, attention of A. G. Hammett, III, Treasurer,

(b) to the Builder, at its address specified in Item 1 of Schedule A hereto, with a copy to Messrs. Carroll, Connelley, Hartigan & Hillery, One North LaSalle Street, Chicago, Illinois 60602, attention of John M. Hartigan, Esq., and

(c) to any assignee of the Vendor or of the Company, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Company with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Company.

ARTICLE 23. Law Governing. The Company and the Builder warrant that their respective chief places of business and chief executive offices are located in the states specified or referred to in clauses (a) and (b) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Delaware; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

SOUTHWESTERN ELECTRIC POWER COMPANY,

[Corporate Seal]

by

Attest:

William Jackson
Secretary


William
Vice President

W. J. [Signature]
Witness

Caroline Aranen
Witness

THRALL CAR MANUFACTURING COMPANY,

by


Vice President

[Corporate Seal]

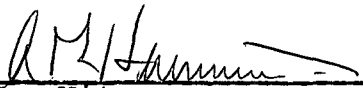
Attest:


Assistant Secretary

STATE OF LOUISIANA,)
) ss.:
PARISH OF CADDO,)

Be it known, that on this 6th day of the month of October, 1977, before me, the undersigned authority, personally came and appeared W. H. SNOW to me personally known and known by me to be the person whose genuine signature is affixed to the foregoing document, who signed said document before me and in the presence of the two witnesses whose names are thereto subscribed as such, being competent witnesses, and who acknowledged, in my presence and in the presence of said witnesses, that he signed the above and foregoing document as Vice President of SOUTHWESTERN ELECTRIC POWER COMPANY pursuant to authority given by the Board of Directors of said corporation, as his own free act and deed and as the free act and deed of said corporation, for the uses and purposes therein set forth and apparent.

IN WITNESS WHEREOF, the said appearer has signed these presents and I have hereunto fixed my hand and seal, together with the said witnesses on the date first above written.


Witness

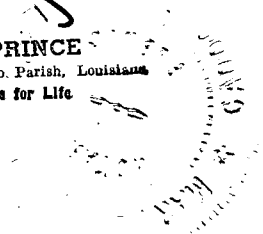

Vice President


Witness


Notary Public

[Notarial Seal]

MARILYN PRINCE
NOTARY PUBLIC, Caddo Parish, Louisiana
My Commission is for Life



STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

I, DENNA L. KNEZ, do hereby certify that
S.D. CHRISTIANSON, personally known to me to be a Vice
President of THRALL CAR MANUFACTURING COMPANY, and
J. M. HARTIGAN, personally known to me to be an Assistant
Secretary of said corporation, and personally known to me to
be the same persons whose names are subscribed to the foregoing
instrument, appeared before me this day in person and severally
acknowledged that as such Vice President and Assistant Secretary,
they signed and delivered said instrument as Vice President
and Assistant Secretary of said corporation, and caused the
corporate seal of said corporation to be affixed thereto,
pursuant to authority given by the Board of Directors of
said corporation, as their free and voluntary act, and as
the free and voluntary act and deed of said corporation, for
the uses and purposes therein stated. Given under my hand
and seal, this 3rd day of October 1977.

Denna L. Knez
Notary Public

[Notarial Seal]

MY COMMISSION EXPIRES JANUARY 11, 1981

SCHEDULE A

to

Conditional Sale Agreement

- Item 1: Thrall Car Manufacturing Company, a Delaware corporation, Post Office Box 218, Chicago Heights, Illinois 60401, attention of Vice President-Finance.
- Item 2: Thrall Car Manufacturing Company (hereinafter called the Builder) warrants that the Equipment will be built in accordance with the Specifications, requirements and standards set forth or referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material or design (except as to articles, materials or designs incorporated therein which were specified or supplied by the Company and not manufactured or designed by the Builder) and workmanship under normal use and service, the Builder's obligation under this paragraph being limited to repairing or replacing at its plant any part or parts of any unit of the Equipment which shall be returned, within one year after the delivery of such unit to the Company, to the Builder with transportation charges prepaid, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES OF THE BUILDER EXCEPT UNDER ARTICLES 2, 3 AND 14 OF THE AGREEMENT, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable

for indirect or consequential damages of any kind. The Builder further agrees with the Company that neither the inspection as provided in Article 3 of the Agreement nor any examination or acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Company of any of its rights under this Item 2.

Item 3: December 1, 1977.

Item 4: "Owned by a bank or trust company under a security agreement filed under the Interstate Commerce Act, Section 20c."

SCHEDULE B

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quan- tity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Time and Place of Delivery</u>
Thrall Car Manufactur- ing Company	100-ton 60' Open-Top High-Side Coal Gondola Cars	HT	GN 100-46-136-A	Chicago Heights, Illinois	242	\$31,899.61	\$7,719,705.62	[See Annex I]	Alliance, Nebraska October 1977

ANNEX I TO SCHEDULE B

SEPX:

FLINT CREEK CAR NUMBERSSOUTHWESTERN ELECTRIC
POWER CO.

103641	103926	104205	104485	104761	105040	105325	105601	105881
103659	103934	104213	104493	104779	105058	105333	105619	105899
103667	103942	104221	104507	104787	105066	105341	105627	105902
103675	103951	104230	104515	104795	105074	105350	105635	105911
103683	103969	104248	104523	104809	105082	105368	105643	105929
103691	103977	104256	104531	104817	105091	105376	105651	105937
103705	103985	104264	104540	104825	105104	105384	105660	105945
103713	103993	104272	104558	104833	105112	105392	105678	105953
103721	104001	104281	104566	104841	105121	105406	105686	105961
103730	104019	104299	104574	104850	105139	105414	105694	105970
103748	104027	104302	104582	104868	105147	105422	105708	105988
103756	104035	104311	104591	104876	105155	105431	105716	105996
103764	104043	104329	104604	104884	105163	105449	105724	106003
103772	104051	104337	104612	104892	105171	105457	105732	106011
103781	104060	104345	104621	104906	105180	105465	105741	106020
103799	104078	104353	104639	104914	105198	105473	105759	106038
103802	104086	104361	104647	104922	105201	105481	105767	106046
103811	104094	104370	104655	104931	105210	105490	105775	106054
103829	104108	104388	104663	104949	105228	105503	105783	
103837	104116	104396	104671	104957	105236	105511	105791	
103845	104124	104400	104680	104965	105244	105520	105805	
103853	104132	104418	104698	104973	105252	105538	105813	
103861	104141	104426	104701	104981	105261	105546	105821	
103870	104159	104434	104710	104990	105279	105554	105830	
103888	104167	104442	104728	105007	105287	105562	105848	
103896	104175	104451	104736	105015	105295	105571	105856	
103900	104183	104469	104744	105023	105309	105589	105864	
103918	104191	104477	104752	105031	105317	105597	105872	